

# Notice of Allowability

Application No.

10/695,339

Examiner

John Sipos

Applicant(s)

KNOERZER ET AL.

Art Unit

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☐ This communication is responsive to \_\_\_\_\_.
  2. ☒ The allowed claim(s) is/are 4-9.
  3. ☒ The drawings filed on 28 October 2003 are accepted by the Examiner.
  4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 7/12/04;12/12/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

### ***RESTRICTION REQUIREMENT***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

**Group I. Claims 1-3**, drawn to packaging machine, classified in Class 53, subclass 133.4.

**Group II. Claims 4-9**, drawn to a quick change module, classified in Class 53, subclass 551.

**Group III. Claims 10-15**, drawn to a method of packaging, classified in Class 53, subclass 412.

**Group I. Claims 16 and 22**, drawn to a filled pouch, classified in Class 206.

**Group II. Claims 17-21**, drawn to a method of packaging, classified in Class 53, subclass 451.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups I and II are related as **combination and subcombination**. A restriction requirement is based on the presumption that all claims of record define patentable inventions. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for its presumed patentability and (2) that the subcombination has utility by itself or in other combinations. (See MPEP 806.06(c)). In the instant case, a comparison of combination claim 1 and subcombination claim 4 provides evidence that the combination, as claimed, does not require the particulars of the subcombination, as claimed, for its presumed patentability. Subcombination claim

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4 sets forth a quick-change module below the forming tube. Combination claim 1 does not set forth these particulars and, consequently, does not require them for patentability. Even if other combination claims *do* set forth these particulars, distinction between the *inventions* is shown if any one combination claim does not include the particulars of any one subcombination claim. The presence of the particulars in other combination claims indicates that they *may be* included as part of the combination, but the claims selected above provide evidence that the particulars are not *required*. (See MPEP 806.05(c), Example 3.) The subcombination has separate utility because it can be used in packaging operations without the rest of the combination.

The inventions of Groups III/IV and I are related as **process and apparatus for its practice**. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP 806.05(e)). In this case the apparatus as set forth in the claims of Group I can be used to practice methods other than the one recited in the claims of Group III and V. For example, the apparatus of Group I can be used to perform a method wherein the step of attaching the zipper to the film is performed after the longitudinal sealing of the edges of the film tube. Furthermore, the method of Group III can be performed with an apparatus comprising of a solid forming tube without the use of a channel for the zipper seal.

Inventions I and IV are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the

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apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the product as claimed can be made by another and materially different apparatus, such as one which does not include a tube former with a channel, splaying rollers, a means for forming space between the film tube and the zipper.

The inventions of Groups II and III-V are **independent inventions**. Two **different combinations**, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent (See MPEP 806.04). A **process and apparatus** are independent if the apparatus cannot be used to practice the process or any part thereof (See MPEP 806.04). The quick-change module subcombination has different mode of operation, different functions and different effects from the process combinations and the pouch product.

The inventions of Groups III/V and IV are related as **process of making and product made**. The inventions are distinct if either of the following can be shown: (1) that the process as claimed can be used to make other materially different products, or (2) that the product as claimed can be made by another materially different process (See MPEP 806.05(f)). In the instant case the package of Group IV can be made by a process other than the ones set forth in Groups III/V. For example, the process need not include a feeding the zipper to a channel in the tube former, splaying the tabs of the zipper, forming a space between the film tube and the zipper or wherein the step of

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attaching the zipper to the film is performed after the longitudinal sealing of the edges of the film tube.

It is recognized that claims 16 and 22 are **product-by-process claims**.

However, a product defined by the process by which it can be made is still a product claim and can be restricted from the process if the examiner can demonstrate that the criteria for distinction between the product and the process, as discussed above, is met. (See *In re Bridgeford*, 149 USPQ 55 (CCPA 1966)). Defining the product in terms of a process by which it is made is merely a permissible alternative technique that applicant may use to define the product. (See MPEP 806.05(f)).

The inventions of Groups III and V are **independent inventions**. Two **different combinations**, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent (See MPEP 806.04). A **process and apparatus** are independent if the apparatus cannot be used to practice the process or any part thereof (See MPEP 806.04). The two methods have different modes of operation since the process of Group III forms a film tube and then feeds the zipper strip into the space between the film tube and the tube former while the process of Group V feeds the zipper to a channel in the tube former and then wraps the film around the zipper and the former to form the film tube.

Because these inventions are distinct for the reasons given above, and because they have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes, as indicated, is proper.

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Applicant is advised that the response to this requirement, to be complete, must include an election of the invention to be examined even if the restriction requirement is traversed.

During a telephone conversation between Examiner John Sipos and Mr. J. Degenfelder, attorney of record in this case, on September 16, 2004, a provisional election was made with traverse to prosecute the invention of Group II comprising claims 4-9. Claims 1-3 and 10-22 are withdrawn from further consideration by the examiner as being drawn to a non-elected invention. (See 37 CFR 1.142(b)). An action on the merits of the elected claims follows.

Applicant is reminded that, upon cancellation of claims to a non-elected invention, the **inventorship must be amended** in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h). Applicant should further **amend the title**, in necessary, to reflect the elected invention.

### ***EXAMINER'S AMENDMENT***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with Mr. J. Degenfelder on September 24, 2004.

In claim 4, line 4, ";" has been replaced with --,--;

after line 4, the following indented new line has been inserted:

--a first and second pair of forming plates;--; and

in lines 5 and 10, "a" has been replaced with --said--.

Claims 1-3 and 10-22, being directed to the non-elected invention, have been cancelled.

In the specification, page 1, the paragraph under section 1 (lines 3-6) has been replaced with the following:

--This application is a continuation-in-part of co-pending U.S. patent application Ser. No. 10/135,329, filed on April 30, 2002, now US Patent 6,679,034, which, in turn, is a continuation-in-part of co-pending U.S. Application No. 10/124,669 filed on April 17, 2002, now US Patent 6,729,109, and is a continuation-in-part of U.S. Application No. 10/100,370, filed on March 18, 2002, now US Patent 6,722,106.--.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***REASONS FOR ALLOWANCE***

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The following is an examiner's statement of reasons for allowance: The prior art does not show a removable quick-change module having 2 pairs of forming plates with the claimed structure cooperating with an intermediate tucker bar.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos  
Primary Examiner  
Technical Center 3721